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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 06 2009

SRC 07 800 18411

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Mari Grissom

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner states that she is a postdoctoral research associate at Northeastern University, Boston, Massachusetts. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and copies of previously submitted exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner submitted five witness letters with her initial petition, most of them from former professors and mentors. Most of the letters were written while the petitioner was a postdoctoral researcher at the Massachusetts Institute of Technology (MIT), before she left MIT for Northeastern University in April 2007.

[redacted], Principal Research Scientist at the Korea Institute of Science and Technology, stated:

> I have known [the petitioner] since January 1988 when she joined our research group as a researcher. She worked in our laboratory until October 1992. . . .
>
> One of [the petitioner's] groundbreaking discoveries involved the development of an analysis of endogenous and synthetic steroids analog that has the potential to diagnose genetic disorders. . . .
>
> It is quite clear that [the petitioner's] research on the analysis of steroids and organic acids, that are vital to drug prevention and therapeutic drug monitoring efforts, is of great importance to the United States.

[redacted] of the Hebrew University of Jerusalem, Israel, stated:

> I had the pleasure of being [the petitioner's] Ph.D. advisor. As an indispensable member of my research group, [the petitioner] distinguished herself from others through both the ingenuity and originality of her insights as a researcher and her talent for integrating advanced techniques of organic synthesis and medicinal chemistry to solve the most complex research problems in synthesis of natural products. In one particularly challenging project, [the petitioner] performed cutting-edge research in the synthesis of a naturally derived steroidal alternative to Digitalis, a standard drug treatment for correcting unstable heart rates. . . . This brand new synthetic process resulted in the creation of an effective, natural, heart rate stabilizing treatment, which lacks the negative side-effects and toxicity of Digitalis that is being used currently. . . .
>
> [The petitioner] is one of the very few researchers in the world today who is capable of using interdisciplinary methods in medicinal, organic, and analytical chemistry, as well as advanced instrumentation technology to bring successful results to benefit U.S. healthcare.

The petitioner's doctoral studies under [redacted] took place between 1995 and 2003, several years before the petitioner filed the petition in 2007. The record does not indicate to what extent, if any, the petitioner's synthetic alternative has replaced Digitalis (if, indeed, that alternative is on the market at all).

[redacted] stated:

> When [the petitioner] joined our research group in the Biological Engineering Division at Massachusetts Institute of Technology, her research was mainly focused on the development, validation and application of exposure biomarkers for alkylanilines, funded by National Institutes of Health (NIH). She made notable contributions to the development of molecular biomarker strategies for DNA and protein-based alkylanilines to discover the biologically effective doses for cancer treatment. . . . Alkylanilines are a

class of aromatic amines that have been linked to a variety of health outcomes, including bladder cancer in humans. . . .

In a novel study, [the petitioner] studied the detection and analysis of DNA adducts that ha[ve] potential significance in tumor initiation and their utility as biomarker. . . . Through this work, [the petitioner] has set herself apart from her peers with her expertise in chemical purification and instrumentation as well as her thorough understanding of organic and analytical chemistry. . . .

In addition, [the petitioner] recently investigated the cytotoxicity and mutagenicity of 2,6-, 3,5-dimethylaniline, which are potential carcinogens. . . . In a groundbreaking study, [the petitioner] . . . accomplished the synthesis of possible metabolites of dimethylanilines *in vivo* and made significant research discoveries, which drew the attention and respect from the entire toxicology community. This finding is important because her work has improved the ability to detect cancer risk at a very early stage.

[redacted], a Senior Research Scientist who collaborated with the petitioner at MIT, stated:

[The petitioner's] research has been part of an ambitious multidisciplinary program with the objective of unraveling the biochemical pathways by which normal metabolic processes can damage DNA and proteins when these processes occur abnormally. . . . [The petitioner] became an integral part of a diverse team at MIT focused on the exploitation of biomarkers as indexes of exposure to carcinogens and, ultimately, of the risk of developing cancer. . . .

While addressing some of the more fundamental problems in cancer research, such as the lack of analytical standards and detection methods, her findings have the potential to make significant inroads into the development of new biomarkers. This method was not only unprecedented, but both more effective and more precise than previous methods such as radio-immuno detection methods.

The last letter is from [redacted] of Johns Hopkins University. An "Index of Exhibits" referred to [redacted]'s letter as an "Independent Advisory Opinion," but one of the petitioner's own articles acknowledged "generous gifts from [redacted] of Johns Hopkins University." [redacted] himself described his close ties to [redacted]'s laboratory. He stated:

Since 2000, [the petitioner's] research at MIT has been conducted in the laboratory of [redacted] with whom I have collaborated for over 30 years. As co-director with [redacted] of a cancer research program funded by the National Institute of Environmental Health Sciences, I have followed [the petitioner's] research and publications closely for the past 3 years. . . .

> [The petitioner's] findings have been instrumental in the development of facile and highly sensitive biomarkers which accurately measure both the exposure and risk factor of alkylaniline substances. More specifically, she found that possible metabolites of alkylanilines can be used to assess how carcinogens associated with cancer risk effect protection from exposure to carcinogen and prevention of cancer incidence. . . .
>
> In a pioneering achievement, [the petitioner] characterized precisely how carcinogens bond with DNA fragments by using a new method of fluorescent labeling which accurately detects and monitors specific sites on a DNA fragment. . . .
>
> She has earned . . . the respect of the international biomedical community for her innovative, meticulous skill as a researcher in the fields of analytical biochemistry and toxicology.

The petitioner's initial submission included copies of articles she had co-authored, but no evidence of the impact of her published work. [redacted] stated that one of the petitioner's articles from the *Korean Journal of Endocrinology* "has been cited to more than 30 times," but the petitioner submitted no documentary evidence to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

On December 6, 2007, the director issued a request for evidence, instructing the petitioner that the initial evidence does not meet all the guidelines set forth in *Matter of New York State Dept. of Transportation*. In response, the petitioner submitted documentation showing the respective impact factors of journals that had published the petitioner's articles. The impact factor is an average derived from the citation of all the articles published in a given journal; it does not follow that every article published in a high-impact journal is, itself, high-impact. The petitioner's submission contained no documentary evidence relating specifically to the impact or influence of her particular writings.

Three new letters accompanied the petitioner's response to the notice. [redacted] of Novartis Institutes for Biomedical Research, Inc., Cambridge, Massachusetts, claimed not to have worked with the petitioner but to have been influenced by "her high quality papers in the field of analytical biochemistry and separation science." Sections of [redacted]'s papers have been copied word-for-word from [redacted]'s earlier letter, such as the assertion that the petitioner's work "resulted in the creation of an effective, natural, heart rate stabilizing treatment, which lacks the negative side-effects and toxicity of Digitalis that is being used currently."

The résumé of [redacted], Senior Director of Toxicology at Inotek Pharmaceuticals Corporation, Beverly, Massachusetts, has several institutions in common with the petitioner's history, including Northeastern University and the Korea Institute of Science and Technology. Portions of Dr. [redacted] letter mirror excerpts of [redacted]'s earlier letter, including the assertion that the petitioner "recently investigated the cytotoxicity and mutagenicity of 2,6-, 3,5-dimethylaniline, which are

potential carcinogens." [redacted]s paragraph regarding the petitioner's work with DNA adducts with "potential significance in tumor initiation and their utility as biomarker" is not entirely identical to [redacted]. [redacted] paragraph on the same subject, but it contains very similar wording.

The letter from [redacted] of the University of Sao Paulo, Brazil, contains numerous passages that closely or exactly match parts of [redacted] earlier letter. For example, [redacted] had stated:

> [The petitioner's] continued ability to do research in this filed [*sic*] is imperative for the benefit and long term health of US citizens. [The petitioner's] unique combination of background and expertise in a number of areas of chemistry, such as medicinal chemistry, analytical chemistry and biological chemistry are extraordinarily well tailored for her specific research in the design and development of natural product-derived drugs.

[redacted] letter contains an almost identical passage:

> [The petitioner's] continued ability to carry on her dedicated work is imperative for the benefit and long term health of US citizens. [The petitioner's] unique combination of background and expertise in a number of areas of chemistry, such as medicinal chemistry, analytical chemistry and biological chemistry are extraordinarily well tailored for her specific research in the design and development of natural product-derived drugs.

It is clear that all three of the new letters were essentially pieced together from previous letters. The circumstances of their creation greatly diminish the new letters' credibility and evidentiary weight. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Given the obvious questions surrounding the letters that the petitioner submitted in response to the request for evidence, we cannot presume that the original letters submitted previously are, themselves, beyond question. The AAO does not dispute the authenticity of the witnesses' signatures, but it is clear in many instances that the letters were written not by the witnesses, but rather for them to sign. Therefore, the evidentiary value of the letters is largely limited to the conclusion that the witnesses support the petitioner's efforts to obtain a waiver.

The director denied the petition on April 17, 2008. On appeal, the petitioner submits copies of notices issued to other aliens. Counsel notes similarities in the wording of the notices, and states "[s]uch duplicity begs the question of whether the merits of the case were afforded proper review." Counsel's protests regarding the "duplicity" of USCIS correspondence issued to different petitioners is somewhat ironic, given this petitioner's submission of witness letters that contain identical or nearly-identical language. Unlike the USCIS notices, those letters purport to come from sources independent of the petitioner and of one another. Their similarities, therefore, are of considerably greater concern than the director's consistent use of standardized language. The decision contains sufficient information to indicate that the director did not simply copy an unrelated decision without examining the present

record of proceeding. In any event, the AAO has reviewed the letters and other materials in the record, and finds that they do not establish that the petition should be approved.

The petitioner has submitted witness letters that contain favorable assessments of her work, and it may well be that these letters reflect the true opinions of those who signed them, even if many of those individuals did not actually write those letters themselves. The record as a whole, however, does not contain consistent, objective evidence to lend credence to those letters or show that the opinions expressed in the letters are widely held. Counsel's assertions regarding the impact factors of various journals shows that counsel is aware of the importance of citations when judging the influence of published articles, but the record is silent regarding the citation of the petitioner's own work, and we will not assume that the very appearance of the petitioner's work in high-impact publications is, itself, credible evidence of the petitioner's influence on the field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.